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TOWNSEND and TOWNSEND and CREW LLP

By: *C. Saika*

PATENT
Attorney Docket No.: 16869S-091000US
Client Ref. No.: W1139-01EY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Nobuyuki Saika et al.

Application No.: 10/649,124

Filed: August 26, 2003

For: Method and Program for Storing Performance Data, and System Using the Same

Customer No.: 20350

Confirmation No. 4758

Examiner: Safet Metjahic

Technology Center/Art Unit: 2161

**PETITION TO MAKE SPECIAL FOR
NEW APPLICATION PURSUANT TO
37 C.F.R. § 1.102(d) &
M.P.E.P. § 708.02, Item VIII,
ACCELERATED EXAMINATION**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a petition to make special the above-identified application in accordance with MPEP § 708.02, Item VIII, accelerated examination. The application has not received any examination by the Examiner.

(A) The Commissioner is authorized to charge the petition fee of \$130 under 37 C.F.R. § 1.17(h), and any additional fees that may be associated with this petition may be charged to Deposit Account No. 20-1430.

(B) All the claims are believed to be directed to a single invention. If the examiner determines that all the claims presented are not obviously directed to a single invention, then Applicant will make an election without traverse as a prerequisite to the grant of special status where the specific grouping of claims will be determined by the examiner.

04/15/2005 AWONDAF1 00000015 201430 10649124

01 FC:1464 130.00 DA

(C) A pre-examination search was performed by an independent patent search firm on or around March 4, 2005. The classification search covered Class **707**, subclasses 2, 104.1, and 205; Class **709**, subclass 226; and Class **711**, subclass 170. Additionally, a computer database search was conducted on the USPTO full-text database including published U.S. patent applications. The following references were identified in the search report:

(1) U.S. Patent Nos.:

5,796,633	Burgess et al.
6,493,837	Pang et al.

(2) U.S. Patent Application Publication Nos.:

2004/0111725	Srinivasan et al.
2004/0122799	Goyal et al.
2004/0148485	Suzuki

(D) The above references are enclosed herewith, collectively as Exhibit B.

(E) Set forth below is a detailed discussion of the references, pointing out with particularity how the claimed subject matter recited in the claims, amended according to the preliminary amendment filed herewith, is distinguishable over the references.

Claimed Subject Matter of the Present Invention

Claim 1 recites a data management method for managing performance data of a computer system. A controller detects free space of a storage area in the computer system. The controller determines a method for storing the performance data depending on the detected free space. The controller acquires the performance data, and then stores the acquired performance data in the storage area according to the determined storing method. See also similarly recited elements in independent claim 5 recites similar features as recited in claim 1.

Independent claims 6, 7, 9, and 10 recite additional specific aspects of the preset invention. Generally, claims 6, 7, 9, and 10 recite a data storing method for a situation where the free space is large and for a situation where the free space is small.

U.S. Patent No. 5,796,633 Burgess et al.

The patent to Burgess et al. provides for a Method and System for Performance Monitoring in Computer Networks. Discussed is logging thread 50 which logs performance data at a predetermined time interval. Logging thread 50 stores the relevant performance data with a time stamp identification in performance data file 56. Performance data file 56 is a data file that may be stored on disk drives 36 of monitored computer 12. Logging thread 50 monitors performance data relating to physical disks of monitored computer 12, such as the percentage of free space on each logical disk. The reference fails to either anticipate or render obvious at least the following limitation of applicants' claimed invention: modification of performance data depending on the detected free disk space (see figures 1-3; column 8, lines 20-21, 30-32, 63-67; and column 9, lines 1-3). Also, the reference does not show or render obvious that the amount of the free space relative to a threshold amount determines how the performance data is handled.

U.S. Patent No. 6,493,837 Pang et al.

The patent to Pang et al. provides for Using Log Buffers to Trace an Event in a Computer System. Discussed is event tracing program 230 which is stored in memory 201 accessible by one or more processors 200. Event tracing program 230 receives performance data about an event occurring on a computer system from data producer program 226. A user-mode data producer program 226 may be the Microsoft brand Internet Information Server which can detect internet accesses, downloads, etc. To log an event to a log buffer, data producer program 226 first passes the event performance data to event tracing program 230 at step 302. Log buffer 204 may be referenced in list 220 of free log buffers. If log buffer 204 is not full, event tracing program 230 will determine the location at which to start writing the log entry by examining the current offset value represented by offset variable 206 at step 308. Program 230 will record the performance data into reserved memory block 210 at step 312. The reference appears to fail to either anticipate or render obvious at least the following limitation of applicants' claimed invention: modification of performance data depending on the detected free storage space (see figures 2, 3; column 4, lines 48-50, 60-65; column 5, lines 3-5, 7-9, 27-29, 45-47; and column 6,

lines 27-30 and 50-52). Also, the reference does not show or render obvious that the amount of the free space relative to a threshold amount determines how the performance data is handled.

U.S. Publication No. 2004/0111725 Srinivasan et al.

The patent application publication to Srinivasan et al. provides for Systems and Methods for Policy-Based Application Management. Discussed is application scheduler 240 receiving at least one policy for managing the applications over computer servers. System 200 includes performance data collector 210. Collector 210 collects usage information indicating performance of the applications, application instances, and/or computer servers 122, 132, 142. The reference appears to fail to either anticipate or render obvious at least the following limitations of applicants' claimed invention: detection of free storage space and modification of performance data depending on the detected free storage space (see figures 1, 2; abstract; paragraphs 27 and 28). Also, the reference does not show or render obvious that the amount of the free space relative to a threshold amount determines how the performance data is handled.

U.S. Publication No. 2004/0122799 Goyal et al.

The patent application publication to Goyal et al. provides for a System for Automated Storage Management for Databases. Discussed is policy manager 211 which has a user interface and a policy engine which encodes performance and workload requirements of tablespaces 200 in a policy that is based on user input received through the user interface. Performance information is collected at the disk and storage controllers, transported to policy manager 211 and stored in performance database 202. Databases 202 create tablespaces 200, and databases 202 establish a storage allocation for tablespaces 200 based on the policy. Policy manager 211 detects if tablespace 200 is out of storage and automatically extends the storage allocation for tablespace 200 based on the policy. Storage reallocation processor 415 may reallocate portions of tablespaces 200 and databases 202 to different storage units 310 in order to comply with various rules. The reference appears to fail to either anticipate or render obvious at least the following limitation of applicants' claimed invention: a relationship between storing performance data and detection of free storage space (see figures 2, 3, 4; abstract; and paragraphs

16, 26, 28, 30, 40, and 44). Also, the reference does not show or render obvious that the amount of the free space relative to a threshold amount determines how the performance data is handled.

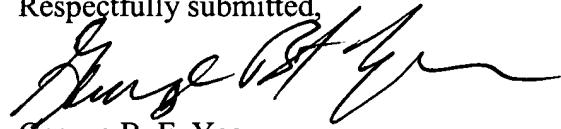
U.S. Publication No. 2004/0148485 Suzuki

The patent application publication to Suzuki provides for a System and Method for Managing Storage Device and Program for the Same. Disclosed is storage managing server 101 containing policy definition file 121, scenario definition file 122 and performance information obtaining function 112. Performance information obtaining function 112 is used to obtain information about the utilization rate of the I/O port of the storage devices 231, 232 and fiber channel switches 221, 222, 223, 224 or information about free areas of the disks 231, 232. Scenario parameter definition file 122 describes the conditions to be checked before the execution of scenarios, such as “when the disk free area is under 20%, append disk storage”. Storage management server 101 may make inquiries to the disk devices 231, 232 to collect information on performance and load. The reference appears to fail to either anticipate or render obvious at least the following limitation of applicants’ claimed invention: a relationship between storing performance data and detection of free storage space (see figures 1, 2, 8; abstract; and paragraphs 21, 22, 24, 38, and 45). Also, the reference does not show or render obvious that the amount of the free space relative to a threshold amount determines how the performance data is handled.

Conclusion

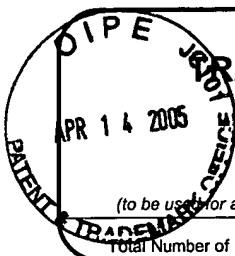
In view of this comments presented in the instant petition and the claim amendments presented in the accompanying preliminary amendment, the Examiner is respectfully requested to issue a first Office Action at an early date.

Respectfully submitted,



George B. F. Yee
Reg. No. 37,478

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Attachments
GBFY
60453937 v1


**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

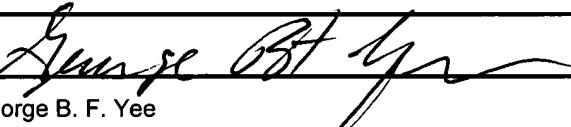
Total Number of Pages in This Submission

Application Number	10/649,124
Filing Date	August 26, 2003
First Named Inventor	SAIKA, Nobuyuki
Art Unit	2161
Examiner Name	S. Metjahic
Attorney Docket Number	16869S-091000US

ENCLOSURES (Check all that apply)

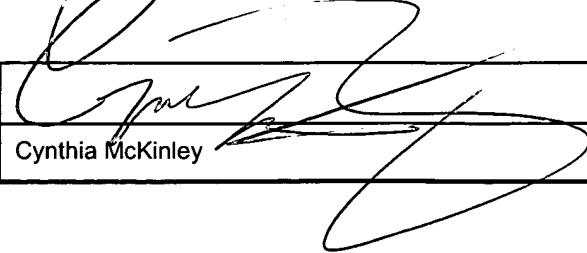
<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Exhibit A - Search Report
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	<input type="checkbox"/> Exhibit B - Table of Contents and 5 Refs.
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> Return Postcard
<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		
	Remarks	The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.

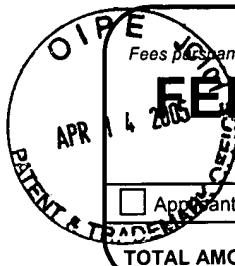
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Townsend and Townsend and Crew LLP		
Signature			
Printed name	George B. F. Yee		
Date	April 12, 2005	Reg. No.	37,478

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Signature		
Typed or printed name	Cynthia McKinley	Date
		April 12, 2005



Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

Fee Transmittal For FY 2005

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 130)

Complete if Known	
Application Number	10/649,124
Filing Date	August 26, 2003
First Named Inventor	SAIKA, Nobuyuki
Examiner Name	S. Metjahic
Art Unit	2161
Attorney Docket No.	16869S-091000US

METHOD OF PAYMENT (check all that apply)

Check Credit Card Money Order None Other (please identify): _____
 Deposit Account Deposit Account Number: 20-1430 Deposit Account Name: Townsend and Townsend and Crew LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

Charge fee(s) indicated below Charge fee(s) indicated below, except for the filing fee
 Charge any additional fee(s) or underpayments of fee(s) Credit any overpayments
 under 37 CFR 1.16 and 1.17

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Fee (\$)	Fee (\$)	Fee (\$)	Fee (\$)	Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description

Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent

Small Entity

Fee (\$)

25

Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent

Fee (\$)

100

Multiple dependent claims

Fee (\$)

180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
-20 or HP =	x	=				

HP = highest number of total claims paid for, if greater than 20

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Fee (\$)	Fee Paid (\$)
-3 or HP =	x	=			

HP = highest number of independent claims paid for, if greater than 3

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other: Petition Fee

130

SUBMITTED BY

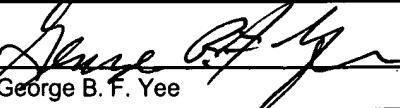
Signature		Registration No. (Attorney/Agent) 37,478	Telephone 650-326-2400
Name (Print/Type)	George B. F. Yee		Date April 12, 2005

Exhibit A

CONFIDENTIAL
(Patentability Search)

I. SEARCH FEATURE

A. General

Data management

B. Specific

Our search was conducted to find prior art for claims 1-10 of U.S. Application 10/649,124. The claims as generally characterized by a data management method for managing performance data of a computer system which includes: a storage area for storing the performance data as data including performance information of the computer system and other data; and a controller for controlling the storage area, comprising: a step in which the controller detects free space of the storage area; a step in which the controller determines a method for storing the performance data depending on the detected free space; a step in which the controller acquires the performance data; and a step in which the controller stores the acquired performance data in the storage area according to the storing method determined in the method determination step.

C. Application

Performance data management of a computer system

II. FIELD OF SEARCH

The search of the above features was conducted in the following areas:

A. Classification search

<u>Class</u>	<u>Subclasses</u>	<u>Description</u>
707/		DATA PROCESSING: DATABASE AND FILE MANAGEMENT OR DATA STRUCTURES
2		Access augmentation or optimizing
104.1		Application of database or data structure (e.g., distributed, multimedia, image)
205		File allocation

<u>Class</u>	<u>Subclasses</u>	<u>Description</u> (continued)
709/		ELECTRICAL COMPUTERS AND DIGITAL PROCESSING SYSTEMS: MULTICOMPUTER DATA TRANSFERRING
	226	Network resource allocating
711/		ELECTRICAL COMPUTERS AND DIGITAL PROCESSING SYSTEMS: MEMORY
	170	.Memory configuring

The above subclasses represent areas deemed to contain subject matter of interest to one or more of the search features. Please note that relevant references may be classified outside of these areas. The integrity of the search is based on the records as presented to us by the United States Patent and Trademark Office (USPTO). No further integrity studies were performed. Also a key word search was performed on the USPTO full-text database including published U.S. patent applications.

III. RESULTS OF SEARCH

A. References developed as a result of search:

<u>U.S. Patent No.</u>	<u>Inventor</u>
5,796,633	Burgess et al.
6,493,837 B1	Pang et al.

<u>U.S. Patent Application Publication No.</u>	<u>Inventor</u>
2004/0111725 A1	Srinivasan et al.
2004/0122799 A1	Goyal et al.
2004/0148485 A1	Suzuki

B. Discussion of related references in numerical order:

The patent to Burgess et al. (5,796,633), assigned to Electronic Data Systems Corporation provides for a *Method and System for Performance Monitoring in Computer Networks*. Discussed is logging thread 50 which logs performance data at a predetermined time interval. Logging thread 50 stores the relevant performance data with a time stamp identification in performance data file 56. Performance data file 56 is a data file that may be stored on disk drives 36 of monitored computer 12. Logging thread 50 monitors performance data relating to physical disks of monitored computer 12, such as the percentage of

free space on each logical disk. The reference appears to fail to either anticipate or render obvious at least the following limitation of applicants' claimed invention: modification of performance data depending on the detected free disk space (see figures 1-3; column 8, lines 20-21, 30-32, 63-67; and column 9, lines 1-3).

The patent to Pang et al. (6,493,837 B1), assigned to Microsoft Corporation provides for *Using Log Buffers to Trace an Event in a Computer System*. Discussed is event tracing program 230 which is stored in memory 201 accessible by one or more processors 200. Event tracing program 230 receives performance data about an event occurring on a computer system from data producer program 226. A user-mode data producer program 226 may be the Microsoft brand Internet Information Server which can detect internet accesses, downloads, etc. To log an event to a log buffer, data producer program 226 first passes the event performance data to event tracing program 230 at step 302. Log buffer 204 may be referenced in list 220 of free log buffers. If log buffer 204 is not full, event tracing program 230 will determine the location at which to start writing the log entry by examining the current offset value represented by offset variable 206 at step 308. Program 230 will record the performance data into reserved memory block 210 at step 312. The reference appears to fail to either anticipate or render obvious at least the following limitation of applicants' claimed invention: modification of performance data depending on the detected free storage space (see figures 2, 3; column 4, lines 48-50, 60-65; column 5, lines 3-5, 7-9, 27-29, 45-47; and column 6, lines 27-30 and 50-52).

The patent application publication to Srinivasan et al. (2004/0111725 A1) provides for *Systems and Methods for Policy-Based Application Management*. Discussed is application scheduler 240 receiving at least one policy for managing the applications over computer servers. System 200 includes performance data collector 210. Collector 210 collects usage information indicating performance of the applications, application instances, and/or computer servers 122, 132, 142. The reference appears to fail to either anticipate or render obvious at least the following limitations of applicants' claimed invention: detection of free storage space and modification of performance data depending on the detected free storage space (see figures 1, 2; abstract; paragraphs 27 and 28).

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for tablespace 200 based on the policy. Storage reallocation processor 415 may reallocate portions of tablespaces 200 and databases 202 to different storage units 310 in order to comply with various rules. The reference appears to fail to either anticipate or render obvious at least the following limitation of applicants' claimed invention: a relationship between storing performance data and detection of free storage space (see figures 2, 3, 4; abstract; and paragraphs 16, 26, 28, 30, 40, and 44).

The patent application publication to Suzuki (2004/0148485 A1) provides for a *System and Method for Managing Storage Device and Program for the Same*. Disclosed is storage managing server 101 containing policy definition file 121, scenario definition file 122 and performance information obtaining function 112. Performance information obtaining function 112 is used to obtain information about the utilization rate of the I/O port of the storage devices 231, 232 and fiber channel switches 221, 222, 223, 224 or information about free areas of the disks 231, 232. Scenario parameter definition file 122 describes the conditions to be checked before the execution of scenarios, such as "when the disk free area is under 20%, append disk storage". Storage management server 101 may make inquiries to the disk devices 231, 232 to collect information on performance and load. The reference appears to fail to either anticipate or render obvious at least the following limitation of applicants' claimed invention: a relationship between storing performance data and detection of free storage space (see figures 1, 2, 8; abstract; and paragraphs 21, 22, 24, 38, and 45).

Sejal Gangar

Exhibit B

TABLE OF CONENTS

U.S. Patent No. 5,796,633 to Burgess et al.	1
U.S. Patent No. 6,493,837 to Pang et al.	2
U.S. Patent Application Publication No. 2004/0111725 to Srinivasan et al.	3
U.S. Patent Application Publication No. 2004/0122799 to Goyal et al.	4
U.S. Patent Application Publication No. 2004/0148485 to Suzuki	5